Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 1015

JOHN RAYMOND JONES, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITIONER'S REPLY MEMORANDUM

John Raymond Jones

2718 College Avenue
Berkeley, California
Pro Se

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In its opposition memorandum, the Government does not deny that petitioner's written statements to his Local Board are prima facie evidence of conscientious objection. Nor does the Government deny the importance of the issues raised. Indeed, petitioner's primary question, differently phrased, was deemed "substantial" by the Government in its petition for writ of certiorari in United States v. Shields, No. 72, this Term (Shields Pet. 4):

> "Whether respondent, who never raised the issue of conscientious objector status before his Local Board prior to disobeying the order to submit to induction, may properly be accorded the benefit of...a later decision by this Court."

The Government instead rests its opposition on the contention that the Court of Appeals' decisions denying leave to file an additional brief and denying rehearing were correct because the issue of petitioner's conscientious objection "at that late stage could not affect the validity

of his conviction." (Op. Mem. 3). Both reasons the Government puts forth for this contention were rejected by the Seventh Circuit in Shields, supra.*

The Government attempts to distinguish Shields, supra, from the instant case by contending that while a registrant may be excused for a failure to apply for 1-O status where he is a "nonreligious" objector to a particular war, he cannot be excused where he is a "nonreligious" objector to all war. (Op. Mem. 5). The reason given for the distinction is that "at least some types of nonreligious objection were apparent after Seeger." (Op. Mem. 4). This Court held the result in Welsh v. United States, 398 U.S. 333, to be consistent with the principles set forth in United States v. Seeger, 380 U.S. 163. The Government, however, would construe this to mean that the Welsh result was merely a truism and, for practical purposes, unnecessary because Seeger had already foreclosed reasonable doubt about the scope of the term "religious". The Government would have this Court accept, as a matter of law, the view that "the failure to make the claim of total conscientious objection, after Seeger v. United States, supra, had been decided is not...excusable." (Op. Mem. 5). Petitioner submits that if his failure to apply is to be adjudged "inexcusable", the holding should come after a hearing and not, as the Government, and the Ninth Circuit, would have, as a matter of law.

In holding to its contention, rejected in Shields, supra, that a registrant's refusal to comply with an induction order makes the Board powerless to consider his conscientious objector claim (Op. Mem. 4), the Government disregards the acknowledgment in Mulloy v. United States, ___U.S.___, 3 S.S.L.R. 3301 (1970), note 5, that a

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* The reasons are (1) that a registrant cannot complain of a failure of the Local Board to give him a classification which he did not request, and (2) that Local Boards are without power to consider claims tendered after acts constituting the crime are committed. (Shields Pet. 3, 5; Op. Mem. 3, 4). The Seventh Circuit found these reasons uncompelling where registrant's failure to apply as a conscientious objector was excusable.

registrant conscientiously opposed to war who does comply with his induction order relinquishes his right to make his claim. It also disregards Ehlert v. United States, (No. 120, this Term, certiorari granted), which challenges the restrictive interpretations of CFR § 1625.2 on which the Government relies for this contention.

The Government construes note 15 in McKart v. United States, 395 U.S. 185, as a bar to the application of that decision to conscientious objector claims, (Op. Mem. 4), although the Fourth Circuit in United States v. Eades, ___F 2d___, 3 S.S.L.R. 3185, has applied McKart, supra, to a conscientious objector claimant and has construed note 15 as inapplicable where the issue involved is the effect of statutory interpretation on conscientious objection.

The Government also implies that petitioner should have done more than attack the religious requirement in § 6 (j) in a motion to dismiss; that he should have "endeavor(ed) to present...evidence that he was a conscientious objector." (Op. Mem. 2). This overlooks the fact that the written statements which are now prima facie evidence of conscientious objection were already in the trial record. The Government attempts to distinguish this case from another Ninth Circuit case, United States v. Wroblewski, No. 5955, this Term, because the latter has a ruling on the inadmissability of such evidence, whereas petitioner's record does not. The acknowledged rule in the Ninth Circuit is that a defendant-registrant is precluded from introducing evidence of conscientious objection where he did not present a claim to his Local Board. United States v. Lockhart, 420 F 2d 1143. The Government recognizes that the defense of conscientious objection was not available to petitioner at trial; and acknowledges that petitioner's beliefs are in the record. However, it would now penalize petitioner for his counsel's failure to make an admittedly futile offer of proof. The Government disregards petitioner's contention that, prior to the Welsh decision, the issue was not reasonably available to him, but that petitioner raised it when it became available.

Finally, in its effort to discount the issue that there was insufficient

evidence to prove knowing failure to report, the Government disregards the Court of Appeals' holding that the prosecution was denied the benefit of the presumption of receipt of the induction order. The Government attempts to treat the petitioner's notice of change of address to his Board as not "effecting an official change of address for petitioner". (Op. Mem. 3). However, it is clear that the Court of Appeals held that it did effect an official change and, consequently denied the Government the presumption of receipt of mail. (Pet. App. 4). Thus the Court of Appeals' error in relying on evidence never seen by the jury (Exhibit 1) to establish the sufficiency of evidence for the jury's decision (Exhibit 1A) remains unanswered by the Government.

In conclusion, the Government's failure to distinguish Shields, its disregard of Welsh, its refusal to deal with the issue of insufficiency of evidence for conviction, and its acknowledgment that the only niche available for a prima facie conscientious objector in this instance is imprisonment, further emphasize the need to grant certiorari in this case.

Respectfully submitted,

John Raymond Jones
Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of January, 1971, two copies of Petitioner's Reply Memorandum were mailed postage prepaid to

Erwin N. Griswold
Solicitor General of the United States
Department of Justice
Washington, D.C. 20530

I further certify that all parties required to be served have been served.

John Raymond Jones

2718 College Avenue
Berkeley, California

Pro Se